

Supreme Court U.S.
FILED

05-898 NOV 14 2005

No. OFFICE OF THE CLERK

IN THE
Supreme Court of the United States

FRANK BETTIS,
Petitioner,

v.

RAYMOND KELLY, CITY OF NEW YORK, ET. AL,
Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

Frank Bettis
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QUESTIONS PRESENTED

1) Does the one year statute of limitation rule for filing a Rule 60(b) motion applied under the circumstances of delays in the court system caused by the World Trade Center Attack, and under the District Court own order dated September 21, 2001, this Court ruling in Pioneer Inv. Services Co. v. Brunswick Assoc. 507 U.S. 380, 393 (1993).

2) If the answer to question one is "no" does Res Judicata apply to the Appeals Court Judgment that affirmed the District Court's judgment of which stated that Plaintiff failed to file a timely Rule 60(b) motion.

3)...Is it a failure of Constitutional Due Process to deny a Rule 60(b) motion that is in conflict with the Court's own order stating that it was filed untimely, though it was filed timely; and ruled that Res Judicata is applicable in a second case, because the underlying facts should have been on a Rule 60(b) motion in the previous action to challenge that judgment. Is this a full and fair opportunity to litigate?

PARTIES

The petitioner is Frank Bettis. The respondents are Raymond Kelly, The City of New York, NYPD, Et al.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Frank Bettis respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINION BELOW

The opinion of the United States Court of Appeals for the Second Circuit is reprinted in the Appendix-A. The Second Circuit affirmed the August 4, 2004 decision of the United States District Court for the Southern District of New York is reprinted in the Appendix-A. The opinion denying a petition for rehearing en banc is reprinted in the Appendix-A. Rule 60(b) motion dated September 11, 2001, reprinted in the Appendix-A. The District Court denial of Rule 60(b) motion dated September 24, 2001 reprinted in the Appendix-A. Order of the Court of the Southern District of New York dated September 21, 2001 reprinted in the Appendix-A.

STATEMENT OF JURISDICTION

The decision of the Court of Appeals was entered on April 28, 2005. A timely petition for rehearing en banc was denied on August 17, 2005. This Court has jurisdiction pursuant to 28 U.S.C. 1254 (1).

STATUTES INVOLVED

14TH Amendment U.S. Constitution Due Process Equal Protection of Law

42 U.S.C. 1981

42 U.S.C. 1983

42 U.S.C. 2000d of Civil Rights Act of 1964 as Amendment

U.S. Constitution

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part: "No State shall make or enforce any law which shall deny to any person within its jurisdiction the equal protection of the law" U.S. Constitution Amendment XIV§ 2.

Title 42 USC§ 1983 provides, in pertinent part: "Every person who, under color of any statute, ordinance regulation, custom or usage of any state or territory or District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws shall be liable to the party injured in action at law, suit in equity or other proper proceeding for redress."

U.S. Constitution Amendment XIV

28 USC§ 1254 (1)

Title 42 USC § 1983

Title 42 USC § 1981

Title 42 USC § 2000d

STATEMENT OF THE CASE

Bettis filed his complaint January 7, 2002, alleging that the Defendants have violated his Constitutional Rights of Due Process Equal Protection of the law under the Fourteenth Amendment, and also under New York State Civil Service Law 75. Ultimately rejecting Bettis' position, the Second Circuit affirmed the District Court's judgment of Res Judicata, applied Allen v. McCurry, 449 U.S. 90, 94 (1980). The Court stated that Plaintiff's action in this case is same as in the previous, that Bettis challenged the same dismissal on the same grounds as his earlier complaint. Bettis allegedly made two new allegations to the complaint. The first allegedly involved altering the charges against him in his disciplinary hearing I such a way as to prevent proper review by the Appellate Division when he appealed his dismissal. The Court stated that the New York Appellate Division affirmed the NYPD trial room decision. The Court stated "Although Bettis challenged the uniformity of the NYPD's response to drug allegations against its officers, the evidence showed that from August 1994 to October 1999 every officer who was charged with narcotics use either resigned, retired, or was fired with the exception of four officers, three of whom were non-white." The Court states "if Plaintiff seeks to avoid the earlier judgment based on Defendants' alleged fraud, the way to have done that was by motion in that earlier case pursuant to Rule 60(b) of the Federal Rules of Procedure which authorized relief

from fraud or other misconduct Fed. R. Civ. P. 60(b)(3)," and, also, states that "such a motion now would be untimely, because this action was filed in January 2002, the prior case having been dismissed in September 2000." The Court applied Allen v. McCurry 449 U.S. 90, 94 (1980).

PROCEEDING IN THE DISTRICT COURT

After discovery of new evidence that was not in the first action, and was so denied from being in the first action, Bettis filed a complaint pro se, in Federal District Court alleging that the NYPD violated his 14th Amendment Constitutional Rights. Plaintiff filed motions to amend complaint; No answers were given in response from the Courts on those motions. Defendants filed motion for dismissal based on Res Judicata. On August 4, 2004, the District Court granted Defendants' motion. The Court's reasoned that the Plaintiff's action was the same as his prior action, the facts underlying the initial action which are the same as those underlying in this action; and that the claims arose from his dismissal from the NYPD after he was found guilty of ingesting a controlled substance after a departmental trial.

PROCEEDING IN THE SECOND CIRCUIT

The Second Circuit affirmed the District Court judgment holding that Allen v. McCurry on issues that could have been raised in the previous action; that Plaintiff did not appeal the previous action.

REASON FOR GRANTING THE PETITION

The decision below is in direct conflict with decisions of this Court. The Equal Protection Clause of the 14th Amendment and the Civil Rights Law that incorporate the Equal Protection Clause in 42 USC 1981, 42 USC 2000d, 42 USC 1983. This Court in Hazel v. Atlas Glass v. Hartford-Empire Co. 322 U.S. 238, holding judgment resulting from fraud are not subject to Res Judicata. This Court decision in McDonnell Douglas v. Green 411 U.S. 792, holding of the framework in discrimination cases, of a Plaintiff prima facie case, and Defendants' legitimate non-discriminatory reasons for its action. Texas Department of Community Affairs 450 U.S. 248, 258, holding that "it is the Plaintiff's task to demonstrate that similarly situated employees were not treated equally. With this Court's decision in Reeves v. Sanderson Plumbing Product, Inc. 530 U.S. 133, the Court held that "a Plaintiff's prima facie case of discrimination as defined in McDonnell Douglas v. Green combined the Defendants' legitimate non-discriminatory is false, can be a case for a trial, or judgment for Plaintiff. This conflicts with this Court's holding in Marshall v. Holmes, 141 U.S. 589 (1891), which holds that "...the judgments in question would not have been rendered against Mrs. Marshall but for the use in evidence of the letter alleged to be forged." Pursuant to this very case, but for the false and misrepresented evidence in this case, the Plaintiff